ATTORNEYS FOR APPELLANT:

SUSAN K. CARPENTER
Public Defender of Indiana

C. BRENT MARTIN
Deputy Public Defender
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ELLEN H. MEILAENDER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

MARK A. DARNELL,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 82A01-0611-PC-500
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE VANDERBURGH CIRCUIT COURT
The Honorable David D. Kiely, Magistrate
Cause No. 82C01-0309-PC-18

May 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Mark A. Darnell appeals the denial of his petition for post-conviction relief. We affirm.

Issues

Darnell raises two issues for our review, which we restate as follows:

I. Whether his claim of insufficient evidence is barred by the doctrine of res judicata; and

II. Whether the post-conviction court erred in finding that the prosecutor did not commit misconduct.

Facts and Procedural History

In Darnell's direct appeal, this Court set forth the following facts:

> On January 9, 2000, Susan Volz picked up Darnell and Darnell's brother, David, in Volz's truck. The Darnell brothers put a PVC pipe containing anhydrous ammonia, a substance used to manufacture methamphetamine, in the back of Volz's truck. Volz drove the men to her home, and they took the pipe upstairs, where they proceeded to make methamphetamine, or "crank," with various ingredients and home-made equipment, including a plastic two-liter soda bottle, crushed pseudophedrine pills, a bottle of "liquid fire," ether, and battery lithium. William Slaton subsequently arrived to help make the crank. At some point, Volz, Slaton and the Darnell brothers went to a bar for a few beers. After Darnell's brother, David, passed out at the bar, Darnell and Volz returned to Volz's house. Slaton later returned, without David, and the men continued to make crank. Slaton eventually discarded some of the ingredients and equipment, including the plastic bottle, in the alley behind Volz's house and returned home.
>
> That evening, the Evansville Police Department issued an advisory to be on the lookout for Slaton, said to be driving a beat-up late model primer-colored Oldsmobile. Slaton was familiar to the police, and officers went to Slaton's residence to await his return. The officers watched him arrive and enter his residence. They knocked on the front door, where Slaton met them smelling of anhydrous ammonia and ether. When asked why he smelled like a crank lab, Slaton volunteered that he had been making methamphetamine with Darnell and others at Volz's house. Slaton led the police to Volz's residence, from which officers could detect the strong odor of ether and anhydrous

> ammonia. Recognizing the danger of fire and explosion presented by a crank lab, particularly from the anhydrous ammonia, the police called in a hazardous materials unit. Officers eventually knocked on the front door of Volz's home, and heard people running around upstairs. Volz and Darnell came to the front door, and Volz consented to the officers's [sic] request to search the residence. Police officers and members of the hazardous materials team found all of the equipment and ingredients of a working methamphetamine lab. No methamphetamine was found.
>
> On January 13, 2000, the State charged Darnell with dealing by manufacturing methamphetamine, possession of the chemical precursors necessary to make the drugs, and criminal recklessness for storing the explosive anhydrous ammonia.

Darnell v. State, No. 82A01-0012-CR-444, slip op. at 2-4 (Ind. Ct. App. June 8, 2001) (citations omitted); Petitioner's Ex. E. A jury found Darnell guilty of class B felony attempted dealing in a schedule II controlled substance, class D felony possession of precursors with intent to manufacture, and class B misdemeanor criminal recklessness, and the trial court sentenced Darnell to a total of eighteen years. Appellant's App. at 7-8.

On August 27, 2000, Darnell appealed, raising the following consolidated issues:

> I. Whether the State's charge of Dealing sufficiently advised Darnell of the need to defend against a charge of Attempted Dealing.
>
> II. Whether Darnell's convictions of Attempted Dealing and Possession of Precursors violate double jeopardy principles.
>
> III. Whether the court's instruction on Attempted Dealing correctly stated the law.
>
> IV. Whether Darnell's conviction of Attempted Dealing was supported by sufficient evidence.

Darnell, slip op. at 2; Petitioner's Ex. E. Another panel of this Court held that the State's information was sufficient to charge Darnell with attempted dealing; that under the actual evidence test, possession of precursors and attempted dealing were the same offense for

double jeopardy purposes; that Darnell waived his opportunity to challenge the trial court's attempt instruction, and the issue did not present reversible error; and that there was sufficient evidence to convict Darnell of attempted dealing. *Darnell*, slip op. at 4-11; Appellant's App. at 6. In addition, we sua sponte determined that Darnell's convictions for attempted dealing and criminal recklessness violated double jeopardy principles. We therefore affirmed his conviction for attempted dealing of a schedule II controlled substance and vacated his convictions for possession of precursors and criminal recklessness. *Darnell*, slip op. at 11; Appellant's App. at 6.

On September 18, 2003, Darnell filed a pro se petition for post-conviction relief. Appellant's App. at 6, 17-23. On May 15, 2006, Darnell, by counsel, filed an amended petition for post-conviction relief, alleging that the prosecutor committed misconduct by failing to disclose "pending agreements for the State's key witness" and in failing to correct "perjurious statements by the state's key witness" when she testified that she had not been offered leniency; that there was insufficient evidence of the essential element of intent to deliver; and that trial counsel, in failing to move for a directed verdict on the ground that there was no evidence to support the element of intent to deliver, was ineffective. *Id*. at 3, 64-67.

On August 2, 2006, a hearing was held on the amended petition. On October 2, 2006, the post-conviction court issued findings of fact and conclusions of law denying Darnell's petition for post-conviction relief. *Id*. at 116-17. Darnell appeals.[1]

[1] Darnell is not appealing the post-conviction court's determination that he failed to establish that his trial counsel was ineffective.

Discussion and Decision

Darnell challenges the denial of his petition for post-conviction relief. Our standard of review is well settled:

> The petitioner in a post-conviction proceeding bears the burden of establishing grounds for relief by a preponderance of the evidence. When appealing from the denial of post-conviction relief, the petitioner stands in the position of one appealing from a negative judgment. On review, we will not reverse the judgment unless the evidence as a whole unerringly and unmistakably leads to a conclusion opposite that reached by the post-conviction court. Further, the post-conviction court in this case entered findings of fact and conclusions of law in accordance with Indiana Post-Conviction Rule 1(6). A post-conviction court's findings and judgment will be reversed only upon a showing of clear error–that which leaves us with a definite and firm conviction that a mistake has been made. In this review, findings of fact are accepted unless clearly erroneous, but no deference is accorded conclusions of law.

Fisher v. State, 810 N.E.2d 674, 679 (Ind. 2004) (citations and quotation marks omitted).

I. Sufficiency of the Evidence

Darnell argues that there is insufficient evidence of his "intent to deliver" to sustain his conviction for attempted dealing in a schedule II controlled substance. Appellant's Br. at 8. Initially, we observe that a post-conviction petition is not a substitute for an appeal. *Davidson v. State*, 763 N.E.2d 441, 443 (Ind. 2002). Post-conviction proceedings provide the petitioner with an opportunity to raise issues that were not known to him or her at the time of the original trial or were not available upon direct appeal. *King v. State*, 848 N.E.2d 305, 307 (Ind. 2006). Our post-conviction rules contemplate a narrow remedy for subsequent collateral challenges to convictions. *Weatherford v. State*, 619 N.E.2d 915, 916-17 (Ind. 1993). Thus, post-conviction proceedings do not afford a petitioner a "super-appeal." *Timberlake v. State*, 753 N.E.2d 591, 597 (Ind. 2001). If an issue was known and available

but not raised on appeal, it is waived. *Rouster v. State*, 705 N.E.2d 999, 1003 (Ind. 1999). If an issue was raised on direct appeal, but decided adversely to the petitioner, it is res judicata. *Conner v. State*, 829 N.E.2d 21, 25 (Ind. 2005*); Wallace v. State*, 820 N.E.2d 1261, 1263 (Ind. 2005); *Trueblood v. State*, 715 N.E.2d 1242, 1248 (Ind. 1999).

The State asserts that Darnell's sufficiency claim is barred by the doctrine of res judicata. We agree. The doctrine of res judicata bars a subsequent action when an earlier action, involving the same cause of action and the same parties and based on proper jurisdiction, reached a final judgment on the merits. *Annes v. State*, 789 N.E.2d 953, 954 (Ind. 2003). Generally, when a reviewing court decides an issue on direct appeal, the doctrine of res judicata applies, thereby precluding its review in post-conviction proceedings. *Ben-Yisrayl v. State*, 738 N.E.2d 253, 258 (Ind. 2000). The doctrine of res judicata keeps what is essentially the same dispute from being re-litigated. *Sweeney v. State*, 704 N.E.2d 86, 94 (Ind. 1998).

In response to the State's assertion, Darnell contends that the State failed to argue res judicata at the post-conviction hearing and therefore has waived this affirmative defense, citing *Bunch v. State*, 778 N.E.2d 1285, 1289 (Ind. 2002). Appellant's Reply Br. at 4. While it is true that "a party who has failed to plead or prove a Rule 8(C) affirmative defense has no right to prevail on that basis, the party may nevertheless suggest to the court that procedural default of an issue is an appropriate basis to affirm the judgment below." *Bunch*, 778 N.E.2d at 1289. "[A]n appellate court is not precluded from determining sua sponte that an issue is foreclosed under a wide variety of circumstances." *Id*. The court's power to make this determination is a doctrine of judicial administration appropriately referred to as "procedural

default" or "forfeiture." *Id.* The power to determine that an issue is procedurally defaulted is an application of the basic principle that post-conviction proceedings do not afford the opportunity for a super-appeal. *Id*.; *see also Varner v. State*, 847 N.E.2d 1039,1042-43 (Ind. Ct. App. 2006) (applying the doctrine of procedural default in affirming the post-conviction court's sua sponte determination that petitioner's claim was res judicata), *trans. denied*. Thus, we have the authority to determine whether Darnell's sufficiency claim is procedurally defaulted on the basis of res judicata.

In his sufficiency claim on direct appeal, Darnell argued that the evidence merely established his presence at the scene of the crime. On June 8, 2001, this Court rejected that argument. *Darnell*, slip op. at 4-11; Petitioner's Ex. E. Darnell now attempts to rephrase his sufficiency claim by asserting that the evidence does not establish his "intent to deliver" the methamphetamine, citing *Bradley v. State*, 765 N.E.2d 204 (Ind. Ct. App. 2002).[2] Appellant's Br. at 8. However, a petitioner for post-conviction relief cannot avoid the effect of claim preclusion simply by rephrasing an issue or using different language to define an alleged error. *State v. Holmes*, 728 N.E.2d 164, 168 (Ind. 2000). Accordingly, Darnell's new argument does not permit him to circumvent the doctrine of res judicata.

Nevertheless, Darnell attempts to argue that in this instance res judicata does not bar his claim. Specifically, he contends, "At the time of Mr. Darnell's trial the Courts had not yet held intent to deliver was an essential element of dealing in methamphetamine when it

[2] *See also Poe v. State*, 775 N.E.2d 681, 685 (Ind. Ct. App. 2002) (noting that the personal use exemption is not a defense but is an element of manufacturing); *Culbertson v. State*, 792 N.E.2d 573, 576 (Ind. Ct. App. 2003) (noting that the State must prove that the intent to manufacture was not for a defendant's personal use), *trans. denied*.

was charged as manufacturing." Appellant's Br. at 9. According to Darnell, the holding in *Bradley* resulted in a substantive change in the law, which is available retroactively on collateral review. In support of his contention that his claim is not barred by res judicata, Darnell cites *Jacobs v. State*, 835 N.E.2d 485 (Ind. 2005). In *Jacobs*, our supreme court addressed whether the holding in *Ross v. State*, 729 N.E.2d 113, 116-17 (Ind. 2000), that a misdemeanor handgun charge enhanced to a felony could not be enhanced again pursuant to the general habitual offender statute, was applicable retroactively in post-conviction proceedings. The supreme court concluded that the rule announced in *Ross* was substantive and therefore available to persons convicted before it was announced. However, in *Jacobs* the defendant's claim had not already been adversely decided against him on direct appeal; that is, it was not res judicata. Thus, *Jacobs* is inapposite.

Finally, Darnell contends that res judicata does not bar his claim because "fairness trumps finality where a prior ruling does not correctly and adequately address a vital claim resulting in fundamental unfairness." Appellant's Reply Br. at 3. Our supreme court has stated that a court has the authority to reconsider prior decisions of its own or of a coordinate court in any circumstance, although as a rule courts should resist doing so in the absence of extraordinary circumstances such as where the initial decision was "clearly erroneous and would work manifest injustice." *State v. Huffman*, 643 N.E.2d 899, 901 (Ind. 1995). Our review of the instructions provided to the jury in the case demonstrates that this is not an instance where fundamental fairness is threatened due to the application of res judicata. Darnell concedes that the jury was properly instructed as to the statute governing his offense, which at that time provided in relevant part:

> (a) A person who:
>
> (1) Knowingly manufactures
>
> …
>
> a controlled substance, pure or adulterated, classified in schedule I, II, or III, except marijuana, hash oil, or hashish;
>
> ….
>
> commits dealing in a schedule I, II, or III controlled substance, a Class B felony[.]

Ind. Code § 35-48-4-2. The term "manufacture" was then defined as

> the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. *It does not include the preparation or compounding of a controlled substance by an individual for his own use*[.]

Ind. Code § 35-48-1-18 (emphasis added).[3] In *Bradley*, the case relied upon by Darnell, another panel of this Court held that the State must prove that the intent to manufacture methamphetamine was not for personal use. 765 N.E.2d at 211. However, Darnell concedes that the jury was properly instructed that manufacture did not include "the preparation or compounding of a controlled substance by an individual for his own use." Ind. Code § 35-48-1-18. Thus, to determine that Darnell was guilty of attempted dealing, the jury was instructed to consider whether Darnell's production of methamphetamine was for his personal use. Put another way, the trial Darnell received was fundamentally in accordance with the holding in *Bradley*. *Compare Poe v. State*, 775 N.E.2d 681, 685 (Ind. Ct. App. 2002) (concluding that where jury instruction on definition of manufacturing failed to include personal use exemption, trial court abused its discretion in refusing defendant's tendered

instruction, which did include personal use exemption). There being no extraordinary circumstances to cause us to disregard the doctrine of res judicata, we conclude that Darnell's sufficiency claim is barred by it. *See Williams v. State*, 737 N.E.2d 734, 738-39 (Ind. 2000) (noting that defendant's claim that jury was not properly instructed as to the basic elements of attempted murder had been argued and decided adversely to defendant such that it was res judicata and declining to revisit the issue even though it had been decided wrongly); *Harris v. State*, 643 N.E.2d 309, 310 (Ind. 1994) (holding that defendant's sentencing issue had already been decided on earlier appeal or was available to the defendant in that appeal and therefore defendant was precluded from relitigating the issue because it was either res judicata or waived because it was available in his previous appeal); *Atherton v. State*, 714 N.E.2d 1116, 1120 (Ind. Ct. App. 1999) (stating that defendant's post-conviction challenge to the sufficiency of the evidence was res judicata because it was determined on direct appeal).[4]

II. Prosecutorial Misconduct

Darnell claims that the prosecutor engaged in misconduct by permitting a witness for the State to falsely testify. The facts relevant to this issue follow. In January 2000, the State charged Susan Volz with class B felony dealing in a schedule II controlled substance, class D felony possession of precursors, class B misdemeanor criminal recklessness, and class D

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[3] The legislature amended the statute to eliminate this exception effective July 1, 2001. P.L. 17-2001, Sec. 18.

[4] We note that we also have the authority to find that Darnell's claim is procedurally defaulted on the basis that it was known and available on direct appeal. *Bunch*, 778 N.E.2d at 1289. The State advanced such an argument. However, having decided that Darnell's claim is procedurally defaulted by application of the doctrine of res judicata, it is unnecessary to address the State's argument that Darnell's claim was also known and available at the time of his direct appeal.

felony maintaining a common nuisance. Appellant's App. at 136, 139.[5] Based on these charges, Volz faced six to twenty years. P-C. Tr. at 25. Her trial was scheduled for May 22, 2000, and subsequently reset for July 24, 2000. Appellant's App. at 137. On June 5, 2000, the State offered Volz a plea agreement, pursuant to which she would receive a six-year sentence. *Id.*; P-C. Tr. at 25, 30.[6] On July 17, 2000, her trial was rescheduled for August 17, 2000. Appellant's App. at 137. Volz testified for the State in Darnell's trial, held August 7-8, 2000. Trial Tr. at 152-196. The following exchange took place between Darnell's attorney and Volz:

> Counsel: I looked in the file for the clerk's office and saw no plea agreements, have you cut a deal with the government in exchange for your testimony in this case?
> Volz: No, I haven't sir.
> Counsel: Have you been told that it will go better for you if you help the government in prosecuting Mark Darnell, that it will go better for you?
> Volz: No.
> Counsel: You've not been told that?
> Volz: Nope.
> Counsel: No promises of leniency anywhere, …
> Volz: No.
> Counsel: … is that true?
> Volz: That's true.

Id. at 185.

On August 15, 2000, Volz entered into a plea agreement with the State in which she pled guilty to class D felony maintaining a common nuisance. Appellant's App. at 136. On September 14, 2000, the trial court accepted Volz's plea and sentenced her to three years,

[5] The post-conviction court omitted class D felony maintaining a common nuisance in its judgment. Appellant's App. at 114.

[6] A copy of this plea agreement is not contained in the record before us.

suspended. *Id*. The charges for dealing, possession of precursors, and criminal recklessness were dismissed. *Id*.

In reviewing Darnell's claim of prosecutorial misconduct, we utilize a two-step analysis: (1) whether the prosecutor engaged in misconduct; and if so, (2) whether that misconduct, under all the circumstances, placed the defendant in a position of grave peril to which he or she should not have been subjected. *Coleman v. State*, 750 N.E.2d 370, 374 (Ind. 2001); *Wright v. State*, 690 N.E.2d 1098, 1110 (Ind. 1997). The "gravity of peril" is measured by the "'probable persuasive effect of the misconduct on the jury's decision, not on the degree of impropriety of the conduct.'" *Wisehart v. State*, 693 N.E.2d 23, 57 (Ind. 1998) (quoting *Kent v. State*, 675 N.E.2d 332, 335 (Ind. 1996)).

The prosecution may not stand mute while testimony known to be false is received into evidence. *Birkla v. State*, 263 Ind. 37, 42, 323 N.E.2d 645, 648 (1975). "The function of the prosecution in our adversary system of criminal justice is to insure that justice prevails, not to procure convictions at any cost." *Id*., 323 N.E.2d at 648. Thus, prosecutorial use of perjured testimony invokes the highest level of appellate scrutiny. *Sigler v. State*, 700 N.E.2d 809, 813 (Ind. Ct. App. 1998), *trans. denied* (1999). The prosecutor's duty to insure that a conviction is not based on perjured testimony also applies where the false testimony bears on the credibility of a state's witness. *Birkla*, 263 Ind. at 42, 323 N.E.2d at 648. A conviction may not stand where there is any reasonable likelihood that false testimony could have affected the judgment of the jury. *Gordy v. State*, 270 Ind. 379, 381, 385 N.E.2d 1145, 1146 (1979).

Perjury is committed when a witness makes "a false, material statement under oath or

affirmation, knowing the statement to be false or not believing it to be true." Ind. Code § 35-44-2-1; *Carter v. State*, 738 N.E.2d 665, 672 (Ind. 2000). Confused or mistaken testimony is not perjury. *See Timberlake v. State*, 690 N.E.2d 243, 253 (Ind. 1997) ("While the knowing use of perjured testimony may constitute prosecutorial misconduct, contradictory or inconsistent testimony by a witness does not constitute perjury."); *Dunnuck v. State*, 644 N.E.2d 1275, 1280 (Ind. Ct. App. 1994) ("Confusion and inconsistencies are insufficient to prove perjury."), *trans. denied* (1995).

In addressing Darnell's argument, we first observe that he is *not* claiming that an express agreement existed between the State and Volz, pursuant to which she received a benefit in exchange for her testimony. Appellant's Br. at 14; Reply Br. at 2.[7] Rather, Darnell attempts to argue that because the State offered Volz a plea agreement on June 5, 2000, she committed perjury when she answered "No" in response to defense counsel's question, "No promises of leniency anywhere, …". Darnell's argument is faulty in that it misconstrues the defense attorney's question by taking it out of context. The question regarding leniency followed on the heels of two other questions: whether Volz had cut a deal with the

[7] If there had been an existing agreement, the prosecutor would have had a duty to reveal it. Our supreme court has consistently recognized the State's obligation to fully disclose to the jury any beneficial agreement between an accomplice and the State, even when those agreements are not reduced to writing. *See McCorker v. State*, 797 N.E.2d 257, 266 (Ind. 2003) ("We have previously determined that any beneficial agreement between an accomplice and the State must be revealed to the jury."); *Rubalcada v. State*, 731 N.E.2d 1015, 1024 (Ind. 2000) ("A prosecutor must disclose to the jury any agreement made with a witness and any promises, grants of immunity, or rewards offered in return for testimony."); *Lott v. State*, 690 N.E.2d 204, 211 (Ind. 1997) ("A prosecutor must disclose to the jury any agreement made with a witness and any promises, grants of immunity, or rewards offered in return for testimony."); *Morrison v. State*, 686 N.E.2d 817, 818 (Ind. 1997); *Wright v. State*, 690 N.E.2d 1098, 1113 (Ind. 1997); *McBroom v. State*, 530 N.E.2d 725, 729 (Ind. 1988); *Bland v. State*, 468 N.E.2d 1032, 1034 (Ind. 1984); *Newman v. State*, 263 Ind. 569, 572-73, 334 N.E.2d 684, 687 (1975). "'This rule serves to help the jury better assess the reliability and honesty of the felon-witness.'" *McCorker*, 797 N.E.2d at 266 (*quoting Morrison*, 686 N.E.2d at 819).

government, and whether she had been told that things would go better for her if she helped in the prosecution of Darnell.[8] Thus, defense counsel's question was part of a line of inquiry focused on determining whether Volz had received any benefit in return for her testimony.

While Volz did receive an offer of a plea agreement from the State, there is simply no evidence that the offer was contingent upon her appearance as a witness for the State in Darnell's trial. Darnell's suggestion that the rescheduling of Volz's trial gives rise to an inference that the offer was linked to her testimony is wholly insufficient to support his claim. To the contrary, there is evidence that the June 5, 2000, offer was extended for a different reason. At the post-conviction hearing, the deputy prosecutor in Darnell's trial provided the following testimony:

> My practice now that I'm the director and it was the practice of my predecessors to make an offer after or near the time that the charge was filed.[9] Basically to tell the defense attorney what we think the case is worth. And very frequently what ends up coming out, if there is an agreement if there is not a trial, what ends up coming out is frequently different than that initial offer. But, in this case there were no agreements.

P-C. Tr. at 19. We conclude that Darnell has not carried his burden to establish that Volz's statement was false or that she knew of the falsity of the statement. Accordingly, the post-conviction court did not err in finding that the prosecutor did not commit misconduct. *See Sigler*, 700 N.E.2d at 813 (concluding that petitioner failed to establish that evidence led

[8] The parties debate whether a promise is an offer and the meaning of leniency. Given the context of the defense attorney's questions, these debates are irrelevant here.

[9] Darnell argues that the plea agreement offered to Volz was not in keeping with the general practice described by the prosecutor because the plea agreement was offered to Volz six months after charges were filed. Appellant's Reply Br. at 2. However, the prosecutor testified that offers were extended *after* charges were filed and the offer to Volz is consistent with this description.

unerringly and unmistakably to conclusion that State denied him due process through the knowing use of perjured testimony).[10]

In concluding that the post-conviction court did not err in finding no prosecutorial misconduct, we note that our supreme court has stated that "[I]t is of course, better practice for the prosecutor to unequivocally state to the jury the entire nature and extent, if any, of the state's dealings with its witnesses." *Gordy*, 270 Ind. at 384, 385 N.E.2d 1145, 1148; *see also Sigler*, 700 N.E.2d at 813 ("Certainly, it would have been admirable and the better practice, if the prosecutor had set the record straight for the court and jury as to the status of any plea discussions[.]").

We affirm the denial of Darnell's petition for post-conviction relief.

SULLIVAN, J., and SHARPNACK, J., concur.

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[10] Darnell suggests that Indiana case law approves the use of "wink-and-nod agreements" and argues that we must put an end to such agreements. Appellant's Br. at 14-15. Our supreme court has previously rejected a similar argument. *See Wright*, 690 N.E.2d at 1113 (rejecting defendant's invitation to re-write established precedent). Nevertheless, we note that nothing precluded Darnell's attorney from asking Volz whether the State had offered her a plea agreement and then asking her whether the agreement was contingent upon her testimony. It was always within the defendant's ability to clear up any confusion about this matter. Additionally, the fact that an offer had been made to Volz was a matter of record and nothing precluded Darnell's attorney from checking the chronological case summary.